# SIXTH DISTRICT COURT OF APPEAL
# STATE OF FLORIDA

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Case No. 6D23-1144
Lower Tribunal No. 2017-CA-010082-O

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HERNANDO J. LANCHEROS and VL AUTO TRANSPORT, INC.,

Appellants,

v.

RYAN BURKE,

Appellee.

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Appeal from the Circuit Court for Orange County.
Jeffrey L. Ashton, Judge.

July 14, 2023

**ON MOTION FOR REHEARING**

On consideration of Ryan Burke's amended motion for rehearing, rehearing en banc, and/or clarification, the Court grants the amended motion for rehearing, withdraws our prior opinion, and substitutes the following opinion. Burke's amended motion for rehearing en banc and/or clarification is denied.

TRAVER, C.J.

Hernando J. Lancheros and VL Auto Transport, Inc. ("Appellants") appeal a final judgment in Ryan Burke's favor.[1] Appellants raise three issues, one of which merits discussion. Because the trial court improperly directed a verdict on causation, we reverse for a new trial.

Burke claimed Appellants negligently injured him in a car accident. Appellants conceded fault, and the matter proceeded to trial solely on the issues of causation and damages. Burke said he suffered a permanent injury to his back, and that the car accident caused it. Appellants contended Burke's injuries were not caused by the accident, but rather a pre-existing condition.

Burke, who was twenty-four when the accident happened, testified that he had rowed crew competitively since he was a teenager. Relevant here, he acknowledged that he saw a chiropractor twice before the accident for back pain attributable to either weight training or crew. He did not seek treatment for his back at the accident scene, nor did he obtain x-rays or an MRI on his back in the accident's immediate aftermath. He then waited eighteen days before going to a chiropractor for what he described as lingering back pain after his initial soreness from the crash faded.

[1] This case was transferred from the Fifth District Court of Appeal to this Court on January 1, 2023.

Each side also called several expert witnesses. Of note, Appellants elicited testimony from their expert, an orthopedic surgeon, who testified the car crash did not cause Burke permanent injury. He said that, at most, Burke may have suffered a "sprain or strain," which would have benefitted from a few weeks of chiropractic treatment. On cross-examination, the surgeon conceded that this post-accident treatment was related to the crash.

After both sides rested, Burke moved for a directed verdict on causation. He argued that the orthopedic surgeon's testimony raised "zero dispute" that Burke had been damaged at least in some manner, and that no reasonable jury could find Appellants had not injured him. The trial court granted the motion, finding that "a jury is not free to reject uncontradicted expert findings by multiple doctors. And because [Appellants' expert] said, yes, the chiropractic care was reasonable and necessary and related to the accident, then that establishes legal cause."

The verdict form did not have any questions related to causation. Instead, the jury simply decided how much Burke had been damaged. It unsurprisingly returned a verdict in Burke's favor.[2]

[2] Although they timely objected to the trial court's actions, Appellants did not ask the trial court to reserve ruling on Burke's motion until after the parties had finished their closing arguments, in which Appellants argued based on the directed verdict that Burke was entitled to the post-accident chiropractor fees. *See Ricks v. Loyola*, 822 So. 2d 502, 506 (Fla. 2002) ("[T]rial judges who are inclined to grant a directed verdict at the conclusion of the case should instead reserve ruling thereon,

We review de novo the trial court's directed verdict order. *See United Servs. Auto. Ass'n v. Rey*, 313 So. 3d 698, 702 (Fla. 2d DCA 2020). In our review, we apply the same standard as the trial court in evaluating Burke's underlying motion. *See Magical Cruise Co. v. Martins*, 330 So. 3d 993, 999–1000 (Fla. 5th DCA 2021). We will therefore uphold the trial court's decision "where no view of the evidence, or inferences made therefrom, could support a verdict for the nonmoving party." *Sims v. Cristinzio*, 898 So. 2d 1004, 1005 (Fla. 2d DCA 2005). When he made his motion, Burke admitted the truth of all evidentiary facts, as well as every reasonable conclusion or inference favorable to Appellants from those facts. *See Williamson v. Superior Ins.*, 746 So. 2d 483, 485 (Fla. 2d DCA 1999). Indeed, a motion for a directed verdict is not an evidentiary ruling; rather, the motion raises the adduced evidence's legal sufficiency. *Martinez v. Lobster Haven, LLC*, 320 So. 3d 873, 880 (Fla. 2d DCA 2021).

Causation is an essential element of negligence—a plaintiff is entitled to recover only for injury, loss, or damage caused by a defendant's negligence. *Schwartz v. Wal-Mart Stores, Inc.*, 155 So. 3d 471, 473 (Fla. 5th DCA 2015). A defendant may rebut a plaintiff's evidence of causation by showing the harm would

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allow the jury to return a verdict, and thereafter rule on the motion . . . since the jury's actions may moot the motion.").

have occurred regardless of the defendant's conduct. *Schuette v. State*, 822 So. 2d 1275, 1281 (Fla. 2002).

Here, the trial court deemed the orthopedic surgeon's testimony dispositive on the narrow issue of whether the crash caused Burke's back soreness. But Appellants rebutted this and other causation evidence Burke adduced, showing Burke's back injury could have occurred for another reason. Indeed, a reasonable jury could have disbelieved the orthopedic surgeon's testimony. *See Rey*, 313 So. 3d at 703 (reversing directed verdict on causation despite unrebutted testimony); *21st Century Centennial Ins. v. Thynge*, 234 So. 3d 824, 827 (Fla. 5th DCA 2017) (same). It could also disbelieve Burke's own testimony that he had back soreness due to the accident, and instead could have concluded Burke had a pre-existing back injury caused by rowing.

Given the overall weight of the evidence adduced at trial, perhaps this would not have been a likely outcome. But this is not a basis to take the question away from the jury, nor is it how we evaluate this issue on appeal. *Rey*, 313 So. 3d at 701 ("The evidentiary question a trial judge faces in a directed verdict motion is not *should* a jury consider an issue to reach a particular verdict, but rather, *could* a jury reach a particular verdict on that issue."). In conclusion, directed verdicts in negligence cases are rarely appropriate, and that holds true here. *See id.* at 701–02 (citing authorities). We therefore reverse and remand for a new trial.

REVERSED and REMANDED.

WOZNIAK[3] and MIZE, JJ., concur.

Hinda Klein, of Conroy Simberg, Hollywood, for Appellants.

Brian J. Lee, of Morgan & Morgan, Jacksonville, for Appellee.

[3] Judge Wozniak substituted for Justice Sasso in this appeal following her appointment to the Florida Supreme Court. Judge Wozniak has viewed the oral argument conducted in this case.